

University of Chicago Law School Chicago Unbound

Journal Articles

Faculty Scholarship

1939

Book Review (reviewing Homer F. Carey, Cases on the Laws of Trusts (1931))

George Gleason Bogert

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles



Part of the [Law Commons](#)

Recommended Citation

George Gleason Bogert, "Book Review (reviewing Homer F. Carey, Cases on the Laws of Trusts (1931))," 34 Illinois Law Review 514 (1939).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

the bulk which they add to a book of otherwise fine proportions.

The book contains a fair sprinkling of English cases. Most of the cases in the book can properly be called recent. The footnotes are not excessive, but ample. They contain references to important decisions, important law review material, the trust restatement, the treatise of Scott and that of the author, and to relevant statutes.

It is to be regretted that the author did not reduce to text some of the material covered by cases, because some phases of the law of trusts are largely informational and lend themselves to text treatment.

On the whole, Professor Bogert has produced a book of that quality one would have expected from so able a scholar and from one who, in the opinion of many, is America's outstanding trust lawyer. It is certain that most teachers of trust will find it a vast improvement over what they have been using. They can find nothing better, not even in the writer's own production.

HOMER F. CAREY.*

CASES ON THE LAW OF TRUSTS. By Homer F. Carey.† Rochester: Lawyers Co-operative Publishing Co. 2nd edition, 1939. Pp. xxi, 816. \$6.50.

Professor Carey's first edition of his *Cases on Trusts* appeared in 1931. To that work he brought a training in trust law under one of its masters, then Dean Stone, followed by about six years of practice and four years of teaching. To these original qualifications Mr. Carey has since added eight years of intensive study and exposition of the subject in class room and in the law reviews. His latest edition of trust law materials thus deserves respect and careful consideration.

The 1931 book contained 688 pages and 234 cases; the second edition 806 pages and 213 cases. There has thus occurred the rather remarkable phenomenon that the book has expanded more than a hundred pages but has shrunk about 21 cases. This result may have been produced by the use in the latest edition of several very long cases. For example, *Williams Estate*, p.

140, covers nearly eleven pages, *Brahmey v. Rollins*, p. 174, runs through more than twelve pages, and *Loftin v. Keenan*, p. 426, is thirteen pages long. To the writer it would seem that the second edition is near an ideal in page length, but somewhat scanty in number of decisions. While the book as it now stands adapts itself well to schools where 30 or 40 hours are given to the subject, it seems lacking in material for those schools where 50 or 60 hours are allowed.

The editor has introduced many late, important cases. Apparently approximately half of the cases in the 1939 edition were not used in 1931. It can well be argued that such a procedure makes the book more interesting and more truly reflective of the present development of trust law. Progressive teachers like to substitute new cases for threadbare decisions. The best recent cases often summarize earlier steps in judicial management of the problem and also show new uses of the trust. Not only are Carey's 1939 cases new to his own case book to a large extent; they are in great part cases not used in other trust case books. For example, of the first thirteen main cases listed in Carey's table of cases, only one is printed in Scott's book, none in Costigan's, and but three in Bogert's case book.

The outline of 1931 is followed in 1939 with unimportant exceptions. Thirteen cases were used in 1931 to treat trusts to escape taxation, for the conduct of business, and as security devices. The 1939 book omits these cases and substitutes a very condensed statement on these and other common trust purposes. This is probably wise, since these three topics are better left to development in courses in taxation, corporations, and mortgages or security transactions. It is more expedient in a trust book to describe by a short exposition the ways in which trusts reach these business ends, or to insert cases here and there to develop real trust law which incidentally display the functions of the trust.

The only other change in Carey's outline is in Chapter IV, "Purposes Effected by Equity Through the Use of the Trust

* Professor of Law, Northwestern University.

† Professor of Law, Northwestern University.

Device," where he has increased the subdivisions from eight to twelve. This is accomplished by adding an introduction and treating the material on the acquisition of property by deed, will, or descent on oral trust under four headings instead of under one.

The analysis used has much to support it by way of logic and sequence. After an historical introduction covering the history of uses, the editor treats of the creation of the express trust and its purposes, then presents material on resulting and constructive trusts, and lastly offers cases on administration and on relations with third parties. The chapter on distinctions between trusts and other relationships which has been used as an introduction since the days of Ames is not employed by Carey, but decisions on various contrasts are scattered throughout the book, as, for example, in Chapter II where debt and trust, and gift of the legal interest and trust, are discussed. The author's position that all resulting trusts are, like constructive trusts, remedial devices of equity is a stand which can be defended with some force, but the analysis which throws at least some of the resulting trusts into the same class as express trusts, in that both are intent-enforcing, seems more realistic to the reviewer.

Professor Carey gives no cases on problems concerning the trustee in his chapter on trust creation. He covers such questions in five and a half pages of text. While it is admitted that the use of case discussion to develop this topic has been excessive in some case books, since the points are relatively easy and do not involve much argument, it is believed better to insert a few decisions on defects in trustee personnel existing at the beginning of the trust.

Under the heading "Some Uses of the Express Trust; Those Relating to the Family," the editor inserts 43 pages of cases on spendthrift trusts, thus giving this important topic a very thorough treatment. The related trusts, sometimes called "blended," "discretionary," or "support," seem to be touched very lightly.

In this same "purpose" chapter, under the heading, "As a Method of Donating to Charity," are placed ten cases on charit-

able trust creation and the *cy pres* doctrine.

The fourth chapter covers the Statute of Frauds, the Wills Acts, resulting trusts, and all constructive trusts, whether incidental to the enforcement of express trusts, or arising out of a failure to follow the Statute of Frauds or the Wills Acts, or from miscellaneous reasons. This portion amounts to nearly one-fifth of the book.

In opening his fifth chapter, namely, that on administration, the editor inserts a three-page note on trustee personnel problems, including qualifications, resignation, and removal. Here again one finds a topic which lends itself easily to this form of treatment, if one is pressed for space. In this chapter the editor justifies his statement in the preface that he lays major emphasis on problems of administration, for here is found about 30% of the content of the work. It constitutes a key to the more important problems regarding the duties, powers and rights of the trustee, and the rights of the beneficiaries. The last three subsections of this chapter, "Trustee's Rights," "Termination," and "Procedural Problems," would seem not to deserve treatment under the main head "Distribution of Benefits and Burdens," but instead should be separate main heads in themselves.

In the final chapter of the book, "The Trust and Third Persons," the material touches the trustee's right to indemnity and reimbursement, the cases on the trustee's contracts and torts, and the remedies of the beneficiary's creditors.

The cases are in the main well selected and well edited. Many arise outside the line of ordinary trust enforcement, as, for example, in the administration of tax statutes. Possibly the cases of extremely recent origin are slightly excessive in number. Background may have been sacrificed here and there in order to show foreground. The old standby decisions may have been cut a bit too ruthlessly in the interest of novelty, timeliness, and recent adaptations of the trust.

The footnote material follows a middle course between the exhaustive encyclopedic note, with many quotations, running often to the length of a full page, and the

bare reference to one case or the query with a following citation. The Restatement is frequently noted. References occur to most of the relevant law review articles, to many law review notes, to some A. L. R. collections of authorities, and occasionally to text books. No attempt seems to be made to annotate with statutory variations. The numerous uniform and other acts codifying part of the law of trusts are unexplainably ignored, both in the main body of the book and by the absence of an appendix. In the writer's opinion this hiatus is of considerable importance.

On the whole, then, Professor Carey has given to the teaching profession a valuable collection of materials. He has been independent and original in his analysis and choice of cases. His work offers a somewhat novel approach and many hitherto unused sources. Teachers of trusts will do well to give the book careful examination.

GEORGE G. BOGERT.*

HANDBOOK OF ADMIRALTY LAW IN THE UNITED STATES. By Gustavus H. Robinson.† St. Paul: West Publishing Company (Hornbook Series) 1939. Pp. xiii, 1025. \$5.00.

Publication of this treatise upon Admiralty Law by Professor Robinson of Cornell University School of Law comes at an auspicious time in the development of the *corpus juris maris* in the United States. For we have again embarked upon a flood-tide of admiralty and maritime problems incident to Congressional encouragement to the American merchant marine through subsidies and federal regulation of various kinds. "Hughes on Admiralty" and Benedict's "Treatise" were authoritative "bibles" in this field for many years, but much water has flowed since these excellent works, and it is just here that Professor Robinson steps into the picture. In 1917 the Supreme Court of the United States, in *Southern Pacific Co. v. Jensen*¹, formulated, through Justice McReynolds, the concept of a "general admiralty" law in the United States, a kind of "holy of

holies," into which the several States might not with impunity enter by means of workmen's compensation or other regulations maritime in character which mar its characteristic uniformity. Although Justice Holmes doubted the existence of a "brooding omnipresence" of a general admiralty law in the United States, expressed in various dissents, nonetheless this view of the Court persisted, subject to concessions made from time to time by Justice McReynolds (who usually wrote for the Court) in workmen's compensation cases. Congress, taking its cue from the Court, actively furthered these notions by enacting numerous statutes applicable to maritime commerce. Beginning with 1920, there followed in quick succession throughout the next sixteen years, the Federal Death Act, the modified Merchant Marine Act, the Seamen's Act, a new Maritime Lien Act, a Ship Mortgage Act, an Act for Arbitration of Maritime Transactions, an Act creating a Federal Maritime Commission, a Carriage of Goods by Sea Act, the Harbor Workers' Act pertaining to compensation relief, and modifications in 1935 and 1936 of the Limitation of Liability Act. During this period also the Supreme Court drafted modifications of its Rules of Practice in Admiralty. Professor Robinson rightly calls this present period of development in admiralty "the post-Jensen period" (p. 12), and says: "This flood of new interest on the subject matter the writer invokes as the justification for the present work" (p. 13).

Treatment of Admiralty problems by Professor Robinson in his work has followed conventional lines, i.e., after some discussion of the constitutional grant to the Federal Government of jurisdiction over "admiralty and maritime" matters, the author thereafter enters into full discussion of jurisdictional waters, torts, workmen's compensation, wrongful death, admiralty contracts, jurisdiction in rem and the maritime lien, salvage, towage, general average, collision, and limitation of liability of the shipowner. There is no treatment of admiralty pleading, nor marine insurance, for in the opinion of the

* Professor of Law, University of Chicago.

† Professor of Law, University of Kentucky.

¹ 244 U. S. 205 (1917).